

**CITY COUNCIL AGENDA ITEM COVER MEMO**

**FOR AGENDA OF COUNCIL MEETING/WORK SESSION - DATE :** October 11, 2012

**ACTION REQUESTED BY:** Huntsville Utilities

**SUBJECT MATTER :** TVA Agreement

**EXACT WORDING FOR AGENDA:** Resolution authorizing the Mayor to execute a Tri-Party Agreement with TVA, City of Huntsville, and Saint-Gobain allowing Saint-Gobain's participation in the Reservation Preservation Program (RP) and termination of the 5 minute Response (5MR) Interruptible Program. (Utilities: Electric)

**ORDINANCE:** **RESOLUTION:** X **MOTION:**

**(IF AMENDMENT, STATE TITLE AND NUMBER OF ORIGINAL):** N/A

**ITEM IS TO BE CONSIDERED FOR:**

**INTRODUCTION:** **ACTION:** X **DISCUSSION:**

**UNANIMOUS CONSENT REQUIRED?** No

**BRIEFLY STATE WHY THE ACTION IS REQUESTED; WHY IT IS RECOMMENDED OR NOT RECOMMENDED; WHAT COUNCIL ACTION WILL PROVIDE, ALLOW, OR ACCOMPLISH; ANY ASSOCIATED COST; BUDGETED (?); AND ANY OTHER INFORMATION THAT YOU THINK MIGHT BE HELPFUL.** Approval of this resolution will authorize the Mayor to execute a Tri-Party Agreement with TVA, City of Huntsville, and Saint-Gobain allowing Saint-Gobain's participation in the Reservation Preservation Program (RP) and termination of the 5 minute Response (5MR) Interruptible Program.

**MAYOR RECOMMENDS OR CONCURS?** YES \_\_\_\_\_ NO \_\_\_\_\_ N/A \_\_\_\_\_

**SIGNATURE:** William C. Pippin, President & CEO

**DATE:** September 21, 2012

**RESOLUTION NO. 12-\_\_\_\_\_**

**WHEREAS**, the City of Huntsville, Alabama (hereinafter referred to as Distributor), and Tennessee Valley Authority (hereinafter referred to as TVA), did heretofore enter into a contract dated May 26, 1980 (which contract, as amended and supplemented, is hereinafter called the Power Contract); and

**WHEREAS**, the Distributor and Saint-Gobain Ceramics & Plastics, Inc. (hereinafter referred to as Company) have entered into a power supply contract, with a remaining term of at least four years (Company Contract), under which Company purchases power from Distributor for the operation of the Company's plant near Huntsville, Alabama; and

**WHEREAS**, TVA, Distributor and Company have entered into an agreement dated January 10, 2008 (5MR Agreement) in which Company participates in TVA's 5 Minute Response Interruptible Program under which a portion of Company's Contract Demand is designated as 5 MR interruptible power; and

**WHEREAS**, Distributor and Company wish to participate in TVA's Reserve Preservation (RP) Interruptible Program under which a portion of Company's Contract Demand is designated as RP interruptible power; and

**WHEREAS**, the parties wish to supplement and amend the Company Contract in the respects necessary to provide for such participation during the term of this RP Program Agreement and termination of the 5 MR Agreement; and

**WHEREAS**, there is now presented to the City Council of the City of Huntsville, Alabama, an agreement instituting the Reserve Preservation Agreement effective \_\_\_\_\_, 2012, with the representation that the said agreement has been approved by the Huntsville Electric Utility Board.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Huntsville, Alabama, that it does approve the aforesaid Reserve Preservation Agreement and Tommy Battle, as Mayor of the City of Huntsville, Alabama, be, and he is authorized to execute said agreement for and on behalf of the City of Huntsville, Alabama, and the Clerk-Treasurer be and he is hereby authorized to attest the same and to affix thereto the seal of the City of Huntsville, Alabama, all in as may counterparts as may be necessary.

**BE IT FURTHER RESOLVED** by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into a tri-party agreement by and between the City of Huntsville, Saint-Gobain Ceramics & Plastics, Inc., and the Tennessee Valley Authority on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is

substantially in words and figures similar to that certain document attached hereto and identified as "Reserve Preservation Agreement between City of Huntsville, Alabama, Saint-Gobain Ceramics & Plastics, Inc. and Tennessee Valley Authority," consisting of 20 pages and the date of \_\_\_\_\_, 2012, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

**ADOPTED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
President of the City Council of  
The City of Huntsville, Alabama

**APPROVED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Mayor of the City of Huntsville,  
Alabama



Tennessee Valley Authority, Post Office Box 1010, Muscle Shoals, Alabama 35662-1010

September 7, 2012

Mr. William C. Pippin  
President and Chief Executive Officer  
Huntsville Utilities  
Post Office Box 2048  
Huntsville, Alabama 35804-2048

Dear Bill:

Enclosed for your review and execution are four original copies of the Saint-Gobain Reserve Preservation agreement and three original copies of the related Wholesale agreement.

Upon execution of all four original copies of the Reserve Preservation agreement by Saint-Gobain and Huntsville, and execution of all three original copies of the Wholesale agreement by Huntsville, please return all the originals to me for further handling by TVA. Three fully executed originals of the Reserve Preservation agreement and two fully executed originals of the Wholesale agreement will be returned to you for your files.

If you have any questions concerning the enclosed agreements, please contact me.

Sincerely,

*Kevin*

Kevin C. Chandler  
Senior Customer Service Manager

*by Brenda*

Enclosures

# RESERVE PRESERVATION AGREEMENT

Date: \_\_\_\_\_

Contract No. 6568

THIS AGREEMENT (RP Program Agreement) is made and entered into by and among the following parties:

**COMPANY: SAINT-GOBAIN CERAMICS & PLASTICS, INC.**

Legal Status: a corporation created and existing under and by virtue of the laws of the State of Delaware

**DISTRIBUTOR: CITY OF HUNTSVILLE, ALABAMA**

Legal Status: a municipal corporation created and existing under and by virtue of the laws of the State of Alabama

**TVA: TENNESSEE VALLEY AUTHORITY**

Legal Status: a corporation created and existing under and by virtue of the Tennessee Valley Authority Act of 1933, as amended (TVA Act)

**W I T N E S S E T H:**

WHEREAS, Distributor purchases power from TVA for resale under Power Contract TV-54501A, dated May 26, 1980, as amended; and

WHEREAS, the currently effective power supply contract between Distributor and Company (Company Contract), with a remaining term of at least four years, covers arrangements under which Distributor supplies firm power to Company for the operation of Company's plant near Huntsville, Alabama; and

WHEREAS, under an agreement among Company, Distributor, and TVA dated January 10, 2008 (5 MR Agreement), Company participates in TVA's 5 Minute Response Interruptible Program under which a portion of Company's Contract Demand is designated as 5 MR interruptible power; and

WHEREAS, Distributor and Company wish to participate in TVA's Reserve Preservation (RP) Interruptible Program, under which a portion of Company's Contract Demand(s) will be designated as RP interruptible power; and

WHEREAS, Company, Distributor, and TVA wish to supplement and amend the Company Contract in the respects necessary to provide for such participation during the term of this RP Program Agreement and termination of the 5 MR Agreement;

NOW, THEREFORE, for and in consideration of the premises and of the mutual agreements set forth below, and subject to the provisions of the TVA Act, the parties enter into this RP Program Agreement by agreeing as follows:

## **ARTICLE I**

### **CONTRACT CONTENTS**

#### **ARTICLE I            CONTRACT CONTENTS**

#### **ARTICLE II           DEFINITIONS**

- 2.1        Definitions
- 2.2        Additional Definitions

#### **ARTICLE III           RP PROGRAM FEATURES**

- 3.1        RP Program Event Features
- 3.2        RP Suspension
- 3.3        Duration and RP Event Limitations
- 3.4        Load Reduction Plan
- 3.5        Amendments to Company Contract
- 3.6        Notification

#### **ARTICLE IV           TERM AND TERMINATION**

- 4.1        Effective Date and Term
- 4.2        Termination of RP Program Agreement
- 4.3        Termination of Company Contract

#### **ARTICLE V            RP DEMAND AND BILLING**

- 5.1        Additional Definitions
- 5.2        RP Protected Demand and RP Availability
- 5.3        Adjustment to RP Protected Demand and RP Availability
- 5.4        Determination of Billing Amounts
- 5.5        RP Demand Credits
- 5.6        Energy Credits
- 5.7        Underperformance Charges
- 5.8        Adjustments

#### **ARTICLE VI           POWER SYSTEM INFORMATION**

- 6.1        Information System
- 6.2        No Warranties

#### **ARTICLE VII           MISCELLANEOUS PROVISIONS**

- 7.1        Conflicts
- 7.2        Administrative Costs Charge
- 7.3        Interference with Availability of Power
- 7.4        Termination of 5 MR Agreement

#### **CONTRACT ATTACHMENTS:**

##### **Guidelines**

## **ARTICLE II**

### **DEFINITIONS**

#### **SECTION 2.1 – DEFINITIONS**

- 2.1.1 "5-Minute Period" shall mean, for any clock hour, the first 5-consecutive-minute clock interval measured from the beginning of that hour and each 5-consecutive-minute clock interval thereafter in that hour.
- 2.1.2 "Annual Average RP Demand" shall mean the average RP Demand during the RP Peak Hours in any given 12-consecutive-month period.
- 2.1.3 "Billing Period" shall mean the period of time from the Meter-Reading Time in one calendar month to the Meter-Reading Time in the next calendar month used to determine the power and energy amounts for which Company is to be billed.
- 2.1.4 "CPT" (Central Prevailing Time) shall mean either Central Standard Time or Central Daylight Time, whichever is currently applicable.
- 2.1.5 "Excess 5-Minute Demand" shall mean the amount, if any, by which the Total 5-Minute Demand for any 5-Minute Period exceeds the aggregate amount of the (a) RP Protected Demand and (b) RP 5-Minute Demand for that 5-Minute Period.
- 2.1.6 "Excess Demand" shall mean the amount, if any, by which the Total Demand for any clock half-hour exceeds the aggregate amount of (a) the RP Protected Demand and (b) the RP Demand for that clock half-hour.
- 2.1.7 "Guidelines" shall mean the Guidelines attached to and made a part of this RP Program Agreement. The Guidelines may be changed or adjusted by TVA from time to time upon 60 days' written notice; provided, however, with respect to Guideline 4 - Termination, no change or adjustment to the Guidelines shall reduce (i) the noncompliance threshold giving rise to TVA's or Distributor's termination right to an amount less than 90 percent or (ii) the notice period for any such termination to less than 60 days.
- 2.1.8 "Meter-Reading Time" for any calendar month shall mean 0000 hours CPT, on the first day of the following calendar month.
- 2.1.9 "Non-Reliability RP Program Event" shall mean an RP Program Event that TVA may designate as occurring during the designated hours for Non-Reliability RP Program Events specified in Table 3.1 below.
- 2.1.10 "Proprietary Information" shall mean any and all information related to projected forecasts of TVA's power system operations and other forecasts relative to potential suspensions of RP disclosed by TVA to Company whether via the System or otherwise.
- 2.1.11 "Rate Schedule" shall mean Distributor's rate schedule applicable for billing Company under the Company Contract, as it may be modified, changed, replaced, or adjusted from time to time as provided under the contractual arrangements

between Distributor and TVA (together with the currently effective Adjustment Addendum).

- 2.1.12 "Reliability RP Program Event" shall mean an RP Program Event that TVA determines, in its sole judgment, is necessary or appropriate to address the reliability of the TVA system or the reliability of any portion of the TVA system.
- 2.1.13 "RP" shall have the meaning set out in section 5.1 below.
- 2.1.14 "RP 5-Minute Demand" shall mean the amount for any 5-Minute Period (up to and including the RP available in that 5-Minute Period), if any, by which the Total 5-Minute Demand for that 5-Minute Period exceeds the RP Protected Demand.
- 2.1.15 "RP Demand" shall mean the amount for any clock half-hour (up to and including the RP available in that clock half-hour), if any, by which the Total Demand for that clock half-hour exceeds the RP Protected Demand.
- 2.1.16 "RP Peak Hours" shall mean (1) the hours from 1:00 pm to 7:00 pm CPT during the Billing Periods of April through October; and (2) the hours from 4:00 am to 10:00 am CPT during the Billing Periods of November through March; excluding weekends and weekdays observed as Federal holidays for New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.
- 2.1.17 "RP Program Event" shall mean a suspension of the availability of RP during the time period designated by TVA.
- 2.1.18 "RP Protected Demand" shall have the meaning set out in section 5.1 below.
- 2.1.19 "Summer Period" shall mean the billing months designated as the Summer Period under the section of the applicable Rate Schedule entitled "Determination of Seasonal Periods."
- 2.1.20 "System" shall mean the computer-based information system or other information system designated by TVA under Article VI below.
- 2.1.21 "Top Cost" shall mean TVA's projected hour ahead cost for supplying the last 100 MW of the total amount of the entire load which TVA projects it will be serving in that hour (including both native system load and off-system load to be supplied by TVA under exchange arrangements).
- 2.1.22 "Total 5-Minute Demand" shall be the average amount during each 5-Minute Period of Company's load measured in kW.
- 2.1.23 "Total Demand" for each clock half-hour shall be the average amount during that half-hour of Company's load measured in kW.
- 2.1.24 "Transition Period" shall mean the billing months designated as the Transition Period under the section of the applicable Rate Schedule entitled "Determination of Seasonal Periods."



2.1.25 "Wholesale Rate Schedule" shall mean the wholesale rate schedule in the Schedule of Rates and Charges to the Wholesale Power Contract between TVA and Distributor.

2.1.26 "Winter Period" shall mean the billing months designated as the Winter Period under the section of the applicable Rate Schedule entitled "Determination of Seasonal Periods."

## **SECTION 2.2 – ADDITIONAL DEFINITIONS**

Additional definitions are provided for in section 5.1 of Article V below.

## ARTICLE III RP PROGRAM FEATURES

### SECTION 3.1 – RP PROGRAM EVENT FEATURES

Subject to the other provisions of this RP Program Agreement, including the Rate Schedule, Distributor shall make available to Company the RP Program with the RP Program Event features as indicated below.

Table 3.1: Program Event Features

<u>Non-Reliability RP Program Event</u> duration	4 to 8 hours
Maximum total duration of <u>Non-Reliability RP Program Events</u> during any TVA fiscal year (current TVA fiscal year is October 1 through September 30)	10 hours These total duration hours will not be prorated for RP Program Agreements with Effective Dates that are not on the first day of the TVA fiscal year.
Minimum advance notification of an <u>RP Program Event</u>	TVA may suspend the availability of <u>RP</u> upon at least 30 minutes' notice to Company
Maximum daily <u>Non-Reliability RP Program Events</u>	One per day (beginning 0000 hours <u>CPT</u> )
Designated hours for <u>Reliability RP Program Events</u>	All hours
Maximum frequency and duration of <u>Reliability RP Program Events</u>	None
Designated hours for <u>Non-Reliability RP Program Events</u> (all times are <u>CPT</u> )	For the months of April through October: 1:00 pm to 10:00 pm and For the months of November through March: 4:00 am to 10:00 am and 3:00 pm to 10:00 pm

The parties may enter into an agreement under which Non-Reliability RP Program Event hours, in addition to the 10 hours provided in Table 3.1 above, are made available during a specific Summer Period or Winter Period.

## SECTION 3.2 – RP SUSPENSION

3.2.1 RP Program Event Notice. TVA shall provide notices to Company via a system designated by TVA for providing such notices, not less than 30 minutes in advance of an RP Program Event, specifying the beginning of the RP Program Event. It is specifically recognized that as of the Effective Date of this agreement, such notices are provided by telephone, and notice shall be given to the telephone number designated as the Primary RP Program Event Notice Phone Number in Table 3.2.1 below. If no one is reached at the Primary RP Program Event Notice Phone Number, TVA may (without obligation) also provide notices to the Secondary RP Program Event Notice Phone Number(s), if any.

Table 3.2.1: Phone Number(s) for RP Program Event Notification

Primary <u>RP Program Event Notice Phone Number</u>	256-882-6641
Secondary <u>RP Program Event Notice Phone Number(s)</u>	256-650-9202

3.2.2 RP Program Event. For all 5-Minute Periods during any RP Program Event, the availability of RP is suspended and Company shall cease taking RP by curtailing its load such that its Total 5-Minute Demand will be less than or equal to its RP Protected Demand. Notwithstanding anything that may be construed to the contrary, the availability of RP remains at all times subject to the provisions of section 7.3 below covering interference with availability or use of power.

3.2.3 Suspension Periods. For billing purposes, each RP Program Event shall begin when the suspension becomes effective as specified in the notice provided by TVA and shall end at the time notice is given of the restoration of the availability of RP; provided, however, that if such notice is not given before the end of the Billing Period in which a period of suspension begins, that period of suspension shall be deemed to end at the end of the Billing Period and a new RP Program Event shall be deemed to begin at the start of the next Billing Period and continue until the time notice is given of the restoration of the availability of RP.

It is expressly recognized that, solely for purposes of determining Company's Excess Demand charges under section 5.4 below:

- (a) if an RP Program Event does not begin on a clock half-hour, the suspension period shall be deemed to have become effective beginning on the clock half-hour immediately following the time that the RP Program Event begins, and
- (b) if an RP Program Event does not end on a clock half-hour, the suspension period shall be deemed to have ended at the end of the clock half-hour immediately preceding the time that the RP Program Event ends.

3.2.4 Backup Generation. Company shall not operate any diesel-fueled power generation to replace any amount of suspended RP during any RP Program Event.

3.2.5 System For Providing RP Program Event Notices. Company shall at all times maintain, in accordance with guidelines furnished or approved by TVA, a telephone line (or an alternative system designated or approved by TVA) dedicated to the receipt of notices under the system currently designated by TVA under subsection 3.2.1 above. However, it is recognized that TVA may designate a new system under which telephone notification is no longer available upon not less than 60 days' written notice. In such a case, Company

shall cooperate with TVA in implementing any new system to be used in providing notice of an RP Program Event.

3.2.6 RP Program Event Notice Change. Company's contact information for the purposes of providing RP Program Event notifications under subsection 3.2.1 above may be changed at any time and from time to time by Company upon receipt and processing by TVA of a change form designated by TVA. Said form shall be signed by an authorized operating representative of Company and shall include instructions on how to submit said form to TVA to be properly processed. It is recognized that TVA may require said form to be submitted to TVA in a manner that differs from the requirements set forth for written notices under section 3.6 below.

### **SECTION 3.3 – DURATION AND RP EVENT LIMITATIONS**

3.3.1 RP Program Event Hours. For the purposes of determining the accrued duration of Non-Reliability RP Program Event hours applicable to the limitation on maximum total duration of Non-Reliability RP Program Event hours provided in Table 3.1 above,

- (a) designated Reliability RP Program Event hours shall be considered Non-Reliability RP Program Event hours (irrespective of the hours in which the Reliability RP Program Event is designated) until the maximum total duration of Non-Reliability RP Program Event hours has been reached

and

- (b) RP Program Events with durations that are not multiples of one whole hour will be rounded up to the next whole hour duration.

3.3.2 RP Program Events. For the purposes of determining maximum daily Non-Reliability RP Program Events under Table 3.1 above,

- (a) a designated Reliability RP Program Event shall be considered a Non-Reliability RP Program Event (irrespective of the hours in which the Reliability RP Program Event is designated) if no Non-Reliability RP Program Event hours have been designated that day

and

- (b) if a designated Reliability RP Program Event spans 0000 hours CPT, a Reliability RP Program Event shall be deemed to have occurred on the day commencing from 0000 hours CPT.

3.3.3 Reliability RP Program Events. It is expressly recognized that nothing in subsections 3.3.1 and 3.3.2 above shall limit the frequency, duration, or designated hours in which TVA designates Reliability RP Program Events as provided under Table 3.1 above.

#### **SECTION 3.4 – LOAD REDUCTION PLAN**

It is recognized that prior to the Effective Date specified in section 4.1 below, Company provided Distributor and TVA a plan certified by its authorized representative (Load Reduction Plan) that is acceptable to Distributor and TVA describing the actions that will be taken by Company to suspend its RP takings as required under section 3.2 above. Company shall update the Load Reduction Plan annually and provide Distributor with the updated plan by March 1 of each year. The updated Load Reduction Plan, acceptable to Distributor and TVA, shall be certified by an authorized representative of Company.

#### **SECTION 3.5 – AMENDMENTS TO COMPANY CONTRACT**

As of the Effective Date of this RP Program Agreement, the Rate Schedule provided for under the Company Contract is Schedule SMSC. No amendment to the Company Contract during the term of this RP Program Agreement providing for a different Rate Schedule, contract demand, or additional overlay product shall be effective unless Company, Distributor, and TVA contemporaneously amend this RP Program Agreement to provide for the applicable Rate Schedule, contract demand, or additional overlay product.

#### **SECTION 3.6 – NOTIFICATION**

Except as may otherwise be provided in accordance with subsection 3.2.6, any written notice required by this RP Program Agreement shall be deemed properly given if delivered in writing to the address specified below (a) personally, (b) by recognized overnight courier service, or (c) by United States Mail, postage prepaid. Additionally, any written notice required to be given by TVA shall be deemed properly given if posted by TVA electronically on the System. The designation of the person to be so notified, or the address of such person, may be changed at any time and from time to time by any party by similar notice.

For Company  
Mail Notices to:                      Operations Manager  
   Saint-Gobain Ceramics & Plastics, Inc.  
   219 Cap Adkins Road, S. E.  
   Huntsville, Alabama 35803

For Distributor  
Mail Notices to:                      President and CEO  
   Huntsville Utilities  
   Post Office Box 2048  
   Huntsville, Alabama 35804-2048

For TVA  
Mail Notices to:                      Senior Manager, Power Contracts, WT 3D-K  
   Tennessee Valley Authority  
   400 West Summit Hill Drive  
   Knoxville, Tennessee 37902-1401

## **ARTICLE IV**

### **TERM AND TERMINATION**

#### **SECTION 4.1 – EFFECTIVE DATE AND TERM**

This RP Program Agreement shall become effective as of 0000 hours CPT on October 1, 2012 (Effective Date) and, except as otherwise provided below, shall continue in effect through the Meter-Reading Time for the month of September 2016.

#### **SECTION 4.2 – TERMINATION OF RP PROGRAM AGREEMENT**

This RP Program Agreement may be terminated:

- (a) by any party upon at least 3 years' written notice;
- (b) by Company in the event that any annual decrease in any dollar per kW RP demand credit provided under section 5.5 below is more than 15 percent, upon at least 15 days' written notice to TVA prior to the effective date of such decrease;
- (c) by Company in the event that any dollar per kW RP demand credit provided under section 5.5 below is reduced more than 20 percent in a 36-consecutive-month period, upon at least 15 days' written notice to TVA prior to the effective date of such decrease that would result in said 20 percent reduction;
- (d) by TVA or Distributor in accordance with the Guidelines; or
- (e) by TVA or Distributor upon at least 60 days' written notice if: (i) Company does not maintain a current Load Reduction Plan or (ii) Company's Annual Average RP Demand drops below 500 kW.

This RP Program Agreement shall terminate upon (1) any suspension of power supply to Company under the Company Contract or Distributor's Rules and Regulations or (2) termination of the Company Contract.

#### **SECTION 4.3 – TERMINATION OF COMPANY CONTRACT**

Notwithstanding anything in the Company Contract that may be construed to the contrary, except as otherwise provided below, the parties agree that during the term of this RP Program Agreement, no notice by Company or Distributor to terminate the Company Contract shall be effective sooner than the date on which termination of this RP Program Agreement can be achieved under section 4.2 (a) above. It is expressly recognized that this RP Program Agreement and the Company Contract may be terminated by Distributor, or power supply from Distributor under the Company Contract may be suspended, in accordance with the Rules and Regulations of Distributor.

## ARTICLE V RP DEMAND AND BILLING

### SECTION 5.1 – ADDITIONAL DEFINITIONS

- 5.1.1 "Contract Demand" shall mean the total kW amount of power made available under the Company Contract.
- 5.1.2 "Demand Ratchet" shall mean the exception language set out in the section headed "Determination of Demand" of the Rate Schedule which establishes the level below which billing demand cannot fall.
- 5.1.3 "RP" shall mean the portion of the Contract Demand specified in section 5.2 below that is subject to suspension of availability under section 3.2 above.
- 5.1.4 "RP Protected Demand" shall mean the portion of the Contract Demand specified in section 5.2 below that is not subject to suspension of availability under section 3.2 above.

### SECTION 5.2 – RP PROTECTED DEMAND AND RP AVAILABILITY

Subject to the other provisions of this RP Program Agreement and the Company Contract, during the term of this RP Program Agreement the provisions of the Company Contract providing for Company's Contract Demand shall be deemed amended in the respects necessary to provide as follows:

Table 5.2a: During the Summer Period

2,500 kW	shall be the portion of Company's <u>Contract Demand</u> designated as <u>RP Protected Demand</u>
16,000 kW	shall be the portion of Company's <u>Contract Demand</u> designated as <u>RP</u> and subject to suspension of availability during (i) <u>Non-Reliability RP Program Events</u> and (ii) <u>Reliability RP Program Events</u>

Table 5.2b: During the Winter Period

2,500 kW	shall be the portion of Company's <u>Contract Demand</u> designated as <u>RP Protected Demand</u>
16,000 kW	shall be the portion of Company's <u>Contract Demand</u> designated as <u>RP</u> and subject to suspension of availability during (i) <u>Non-Reliability RP Program Events</u> and (ii) <u>Reliability RP Program Events</u>

Table 5.2c: During the Transition Period

2,500 kW	shall be the portion of Company's <u>Contract Demand</u> designated as <u>RP Protected Demand</u>
16,000 kW	shall be the portion of Company's <u>Contract Demand</u> designated as <u>RP</u> and subject to suspension of availability during (i) <u>Non-Reliability RP Program Events</u> and (ii) <u>Reliability RP Program Events</u>

### SECTION 5.3 – ADJUSTMENT TO RP PROTECTED DEMAND AND RP AVAILABILITY

It is expressly recognized and agreed that the RP Protected Demand and the kW amount of RP made available under this RP Program Agreement may be adjusted by TVA in accordance with the Guidelines.

### SECTION 5.4 – DETERMINATION OF BILLING AMOUNTS

For purposes of determining the charges under the Rate Schedule, the following shall apply:

5.4.1 Billing Demand. The highest Total Demand in a Billing Period shall be the billing demand; provided, however, that the billing demand shall in no case be less than the amount calculated under the Demand Ratchet.

5.4.2 Minimum Billing Demand Reduction. Any time the billing demand is calculated under the Company Contract using the Demand Ratchet, and subject to subsection 5.4.3 below, Company's bill shall be reduced by the amount by which

- (a) the amount calculated under Adjustment 3 of the Wholesale Rate Schedule following application of the Demand Ratchet as provided for in the "Determination of Demand" section of the Rate Schedule

exceeds

- (b) the amount that would be calculated under Adjustment 3 of the Wholesale Rate Schedule based on using RP Protected Demand instead of Contract Demand in the application of the Demand Ratchet.

5.4.3 Demand Ratchet. For the sole purpose of calculating the amount described in (b) under subsection 5.4.2 above, the words "the higher of the currently effective contract demand and the highest billing demand established during the preceding 12 months" shall be replaced by "the sum of (i) the RP Protected Demand and (ii) the highest Excess Demand established during the preceding 12 months"

5.4.4 Excess Demand Charges. For purposes of applying the charges set out in the section headed "Base Charges" of the Rate Schedule, the additional amount to be applied as a part of the demand charge to each kW "by which the customer's billing demand exceeds its contract demand," for purposes of this RP Program Agreement, this additional amount shall be applied to each kW of Company's highest Excess Demand established during a Billing Period.

### SECTION 5.5 – RP DEMAND CREDITS

RP demand credits shall be applied to Company's power bill by multiplying \$5.50 per kW by the higher of (1) the average RP Demand during the RP Peak Hours in the Billing Period, excluding days on which an RP Program Event is in effect, or (2) the highest RP Demand established during the four full clock-half-hour periods immediately preceding the time TVA provides notice of any RP Program Event in a Billing Period. Said RP demand credits calculation is subject to Guideline 2 in the Guidelines.



## SECTION 5.6 – ENERGY CREDITS

For each RP Program Event in a Billing Period, Company's power bill will receive a credit calculated as follows:

$$\text{Energy Credit} = \text{Demand Response} \times \frac{1}{12} \text{ hour} \times \text{HHNG} \times \text{Heat Rate}$$

Where

Energy Credit is the credit, in dollars, which will be applied to Company's power bill for each RP Program Event during which the Demand Response, as calculated below, is a positive number.

Demand Response is the calculated kW reduction for the RP Program Event determined by (a) subtracting the Total 5-Minute Demand for each 5-Minute Period during an RP Program Event from the highest Total Demand, excluding any Excess Demand, established during the four full clock-half-hour periods immediately preceding the time TVA provides notice of any RP Program Event and (b) summing any positive amounts determined from said subtraction.

HHNG is the official NYMEX Henry Hub final settlement posted price for the NYMEX natural gas futures contract for the specific month in which the RP Program Event occurred.

Heat Rate is 10,000 BTU per kWh.

## SECTION 5.7 – UNDERPERFORMANCE CHARGES

For each RP Program Event in a Billing Period, Company's power bill shall be adjusted by charging an amount calculated as follows:

$$\text{Underperformance Charge} = \text{Underperformance} \times \frac{1}{12} \text{ hour} \times \text{Underperformance Multiplier}$$

Where

Underperformance Charge is the charge, in dollars, which will be applied to Company's power bill for each RP Program Event during which company has metered Excess 5-Minute Demand.

Underperformance is the sum of all Excess 5-Minute Demands, if any, for each 5-Minute Period of the RP Program Event.

Underperformance Multiplier is the higher of (1) \$0.10 per kWh or (2) TVA's Top Cost for the clock-hour immediately preceding the RP Program Event.

## SECTION 5.8 – ADJUSTMENTS

Effective with the October Billing Period of any year, upon not less than 60 days' written notice to Company, TVA may change or adjust:

- (a) the RP Peak Hours provided for in subsection 2.1.16 above,
- (b) the designated hours during which Non-Reliability RP Program Events may occur as set out in Table 3.1 above; provided, however, that no such adjustment shall increase the total daily duration of the designated hours during which Non-Reliability RP Program Events may occur, and
- (c) the RP demand credit amount provided for in section 5.5 above

to assure TVA of such cost recovery as TVA determines to be necessary to meet the then-existing circumstances; provided, however, that any such changed or adjusted amounts shall be applied to all customers to which this product is made available.

## **ARTICLE VI**

### **POWER SYSTEM INFORMATION**

#### **SECTION 6.1 – INFORMATION SYSTEM**

6.1.1 System. For Company's convenience, TVA may from time to time provide Company with information related to projected forecasts of TVA's power system operations and other forecasts relative to potential suspensions of RP availability via a System designated by TVA for obtaining access to such information or via other means. All such forecast information shall be deemed to be Proprietary Information and it is expressly recognized and agreed that Company's obligations with respect to such Proprietary Information provided during the term of this RP Program Agreement shall survive its termination or expiration. The System will be owned, operated, and maintained by TVA.

6.1.2 Proprietary Information. As a condition of access to the System and in consideration of TVA's making Proprietary Information available to Company, (i) Company agrees not to divulge Proprietary Information to third parties without the written consent of TVA, and (ii) Company further agrees not to use the Proprietary Information disclosed to it by TVA to compete with TVA or for any purpose other than those set forth in this Article VI. Nothing in this paragraph shall prevent Company from making disclosures to other parties that are required by law; provided, however, Company shall endeavor to secure the agreement of such other party to maintain the information in confidence. In the event that Company is unable to secure such agreement, Company shall notify TVA with reasonable promptness so that TVA may join Company in the pursuit of such an agreement of confidence, or take any other action it deems appropriate.

6.1.3 System Access. For Company's access to the System, Company shall provide, at its expense, such software, hardware, or other equipment as may be necessary. In addition, Company shall be responsible for any telephone or other communications charges incurred in connecting to the System in the manner designated by TVA. Company shall access the System only in accordance with guidelines furnished or approved by TVA and shall use the System only in connection with obtaining information about RP under this RP Program Agreement.

6.1.4 RP Suspensions. Nothing in this section 6.1 shall restrict or limit TVA's right to suspend RP provided for in section 3.2 above and TVA may suspend RP under said section 3.2 without regard to whether or not a potential suspension has been projected. Further, the failure or inability for any reason of Company to access information about a potential suspension, through the System or otherwise, shall not alter Company's obligation to comply with any suspension of RP.

#### **SECTION 6.2 – NO WARRANTIES**

TVA makes no statement, representation, claim, guarantee, assurance, or warranty of any kind whatsoever, including, but not limited to, representations or warranties, express or implied, of merchantability, fitness for a particular use or purpose, accuracy, or completeness, of any estimates, information, service, or equipment furnished or made available to Company under this Article VI. Company hereby waives, and releases the United States of America, TVA, and their directors, officers, agents, and employees from, any and all claims, demands, or causes of action, including, without limitation, consequential damages, arising out of or in any way

connected with any estimates, information, service, or equipment furnished or made available under this Article VI.

## **ARTICLE VII**

### **MISCELLANEOUS PROVISIONS**

#### **SECTION 7.1 – CONFLICTS**

In the event of any conflict between the Rate Schedule and this RP Program Agreement, this RP Program Agreement shall control. In the event of any conflicts between the Company Contract and this RP Program Agreement, this RP Program Agreement shall control.

#### **SECTION 7.2 – ADMINISTRATIVE COSTS CHARGE**

To help recover administrative and other costs of making the RP program available (Administrative Costs), Distributor's monthly power invoice to Company shall include, and Company shall pay, a monthly Administrative Costs Charge (currently \$350). This charge shall be due and payable each month on the due date for the monthly power invoice. Not more frequently than annually, by at least 60 days' notice to Company, TVA may increase or decrease the Administrative Costs Charge to reflect changes in TVA's or Distributor's Administrative Costs.

#### **SECTION 7.3 – INTERFERENCE WITH AVAILABILITY OF POWER**

The term "force majeure" shall be deemed to be a cause reasonably beyond the control of Distributor or TVA, such as, but without limitation to, injunction, administrative order, strike of employees, war, invasion, fire, accident, floods, backwater caused by floods, acts of God, or inability to obtain or ship essential services, materials, or equipment because of the effect of similar causes on suppliers or carriers. Acts of God shall include without limitation the effects of drought if the drought is of such severity as to have a probability of occurrence not more often than an average of once in 40 years.


It is recognized by the parties that the availability of power to Company may be interrupted or curtailed from time to time during the term of this contract because of force majeure or otherwise. Company shall be solely responsible for providing and maintaining such equipment in its plant and such emergency operating procedures as may be required to safeguard persons on its property, its property, and its operations from the effects of such interruptions or curtailments. Company assumes all risk of loss, injury, or damage to Company resulting from such interruptions or curtailments.

#### **SECTION 7.4 – TERMINATION OF 5 MR AGREEMENT**

As of the Effective Date of this RP Program Agreement, the 5MR Agreement is hereby terminated.

IN WITNESS WHEREOF, the parties have caused this RP Program Agreement to be executed by their duly authorized representatives, as of the day and year first above written.

SAINT-GOBAIN CERAMICS & PLASTICS, INC.

By   
Title: Plant Manager

CITY OF HUNTSVILLE, ALABAMA

By \_\_\_\_\_  
Title: \_\_\_\_\_

TENNESSEE VALLEY AUTHORITY

By \_\_\_\_\_  
Senior Manager  
Power Contracts

## Guidelines

### Guideline 1 - Definition of Terms:

5-Minute Period: Shall have the same definition as in the Overlay.

Average Noncompliant Load: Shall mean the average kW amount by which Company's average load during each 5-Minute Period of any suspension of the availability of RP exceeds its RP Protected Demand.

Billing Period: Shall have the same definition as in the Overlay.

Company: Shall have the same definition as in the Overlay.

Company Contract: Shall have the same definition as in the Overlay.

Contract Demand: Shall mean the maximum kW amount of power made available under the Company Contract.

Guidelines: Shall have the same definition as in the Overlay.

Monthly Performance Factor: Shall mean the lowest Performance Factor of all calculated RP Program Event Performance Factors in a Billing Period.

Overlay: The RP Program Agreement (as it may be amended) to which these Guidelines are attached.

Noncompliance: Shall mean the situation when Company does not suspend its entire RP takings during any 5-Minute Period of a suspension in accordance with section 3.2 of the Overlay.

Performance Factor: Shall be calculated for each RP Program Event by dividing the Average Noncompliant Load by the RP Protected Demand specified under section 5.2 of the Overlay and subtracting from 1 and expressing the resulting number as a percentage.

RP: Shall have the same definition as in the Overlay.

RP Demand Calculation: The calculation of the average RP Demand under section 5.5 of Article V.

RP Protected Demand: Shall have the same definition as in the Overlay.

RP Program Event: Shall have the same definition as in the Overlay.

Total 5-Minute Demand: Shall have the same definition as in the Overlay.

Weekdays: Shall mean Monday through Friday; but excluding weekdays observed as Federal holidays for New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

**Guideline 2 - Outages**: As provided below, Company may omit certain Weekdays in which a planned or forced outage occurs from the RP Demand Calculation. The number of Weekdays

that may be omitted in accordance with this section shall be limited to 10 Weekdays per month and shall in no case exceed 40 Weekdays per TVA fiscal year (currently October 1 through September 30). Any outage days in excess of said limitations shall be included in the RP Demand Calculation.

In order to omit planned and forced outage days from the RP Demand Calculation, Company must notify TVA of such planned or forced outage in accordance with operating procedures and guidelines as may be furnished by TVA from time to time. Current operating procedures and guidelines require:

- TVA must receive notification from Company a minimum of 24 hours in advance of planned outages through TVA Online Connection. Notification shall include the amount of load not available for curtailment, an estimated outage start time, and date, and an estimated return-to-service time and date.
- Company shall communicate forced outages to TVA as quickly as operationally feasible through TVA Online Connection, but no more than 24 hours after the start of the forced outage. Notification shall include the amount of load not available for curtailment and an estimated return-to-service time and date.
- If Company's Contract Demand exceeds 100 MW, a phone call shall also accompany the TVA Online Connection notification of a forced or planned outage.

Company shall have until midnight on the last day of the month to select via TVA Online Connection which outage days from the month to exclude from the RP Demand Calculation. Outages must have been properly entered into TVA Online Connection based on the time deadlines associated with planned and forced outages outlined above to be eligible for exclusion.

**Guideline 3 - Adjustment of RP Protected Demand:** TVA may increase the RP Protected Demand of Company upon at least 30 days' written notice if any two Performance Factors in a 12-month period are equal to or less than 97%. The RP Protected Demand will be increased to the average of the Total 5-Minute Demands maintained during RP Program Events when Performance Factors were less than or equal to 97%. When Company has demonstrated a Monthly Performance Factor equal to 100% (based on protected load prior to increase) in a subsequent month, the RP Protected Demand may, upon 30 days' written notice to Company, be adjusted back to the previous level subject to approval and notification by TVA.

Company may, from time to time, request to increase or decrease its RP Protected Demand. TVA may approve such request if 1) there is a verifiable corresponding percentage shift in the Company's overall load, 2) the product subscription limit has not been reached, and 3) Company submits an appropriate load reduction plan acceptable to TVA. Company may, during the term of the Overlay, request to decrease its RP Protected Demand without a verifiable corresponding percentage shift in the Company's overall load. Approval of such request will be made at TVA's sole discretion on a case by case basis.

**Guideline 4 - Termination:** It is recognized that suspension compliance is the essence of the Overlay. Accordingly, it is expressly agreed that if any two Performance Factors are equal to or less than 90% in a 12-month period, TVA or Distributor may terminate the Overlay upon not less than 60 days' written notice.